

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division

JOHN RUSSELL TOMIKEL (#1208622),

Petitioner,

v.

CIVIL ACTION NO. 2:18cv636

HAROLD W. CLARKE, Director,
Virginia Department of Corrections,

Respondent.

FINAL ORDER

This matter was initiated by petition for a writ of habeas corpus under 28 U.S.C. § 2254. The petition alleges violation of federal rights pertaining to Petitioner's convictions for abduction, sexual penetration with an animate object, and two counts of sodomy. As a result of the convictions, Petitioner was sentenced to serve life in prison on each of the four counts.

The matter was referred to a United States Magistrate Judge for report and recommendation pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and (C) and Rule 72 of the Rules of the United States District Court for the Eastern District of Virginia. The Report and Recommendation filed June 21, 2019, recommends dismissal of the petition with prejudice. (ECF No. 20). Each party was advised of his right to file written objections to the findings and recommendations made by the Magistrate Judge.¹ On

¹ Tomikel twice requested an extension within which to file his objections, both of which the court granted. (ECF Nos. 22, 24).

August 23, 2019, the court received Petitioner's Objections to the Report and Recommendation. (ECF Nos. 25-26). The Respondent filed no response to the objections and the time for responding has now expired.

The court, having reviewed the record and examined the objections filed by Petitioner to the Report and Recommendation, and having made de novo findings with respect to the portions objected to, does hereby adopt and approve the findings and recommendations set forth in the Report and Recommendation filed June 21, 2019. It is, therefore, ORDERED that Respondent's Motion to Dismiss (ECF No. 16) be GRANTED and the Petitioner's petition be DENIED and DISMISSED with prejudice.

Finding that the basis for dismissal of Petitioner's § 2254 petition is not debatable, and alternatively finding that Petitioner has not made a "substantial showing of the denial of a constitutional right," a certificate of appealability is DENIED. 28 U.S.C. § 2253(c); see Rules Gov. § 2254 Cases in U.S. Dist. Cts. 11(a); *Miller-El v. Cockrell*, 537 U.S. 322, 335-38 (2003); *Slack v. McDaniel*, 529 U.S. 473, 483-85 (2000).

Petitioner is ADVISED that because a certificate of appealability is denied by this Court, he may seek a certificate from the United States Court of Appeals for the Fourth Circuit. Fed. Rule App. Proc. 22(b); Rules Gov. § 2254 Cases in U.S. Dist. Cts. 11(a). If Petitioner intends to seek a certificate of

appealability from the Fourth Circuit, he must do so within thirty (30) days from the date of this Order. Petitioner may seek such a certificate by filing a written notice of appeal with the Clerk of the United States District Court, United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510.

The Clerk is directed to mail a copy of this Final Order to Petitioner and to provide an electronic copy of the Final Order to counsel of record for Respondent.

/s/ 

MARK S. DAVIS
CHIEF UNITED STATES DISTRICT JUDGE

Norfolk, Virginia

Sept. 13, 2019